

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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BARRY WAYNE ADAMS,

Petitioner,

Case No. 1:11-cv-1123

v.

Honorable Paul L. Maloney

CARMEN PALMER,

Respondent.

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**ORDER REGARDING LEAVE TO PROCEED**  
**IN FORMA PAUPERIS ON APPEAL**

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence for failure to pay child support, Mich. Comp. Laws § 760.165. On December 14, 2011, the Court entered an order and judgment dismissing the petition and denying a certificate of appealability (docket ##8, 9). The order and judgment of dismissal followed the Court's *de novo* review of Petitioner's objections to the report and recommendation of the magistrate judge. Petitioner now has filed a notice of appeal (docket #13) and a motion for leave to proceed *in forma pauperis* on appeal (docket #16).

Federal Rule of Appellate Procedure 3(e) provides that the appellant must pay all required fees at the time a notice of appeal is filed with the district court. Under Sixth Circuit Internal Operating Procedure 103(1), the docketing fee for a case on appeal is \$450.00. In addition, under 28 U.S.C. § 1917, a \$5.00 filing fee must be paid to the district court. Petitioner has not paid the required fees.

Petitioner was permitted to proceed before this Court *in forma pauperis*. Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, he may continue that status on appeal unless this court certifies that his appeal is not taken in good faith. Good faith is judged objectively, and an appeal is taken in good faith when it seeks review of an issue which is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1961).

Detailed reasons for dismissal of the petition as time-barred were provided in the report and recommendation (docket #6) that was adopted by this Court. The Court reaffirms its decision and finds that an appeal from the dismissal of this action would be frivolous. The Court, therefore, certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court within 28 days of this order. Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5). Accordingly:

IT IS ORDERED that Petitioner is DENIED leave to proceed *in forma pauperis* on appeal. The Court certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court within 28 days of this order. Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

Dated: March 27, 2012

/s/ Paul L. Maloney

Paul L. Maloney  
Chief United States District Judge